

1 Dena C. Sharp (State Bar No. 245869)
2 Jordan Elias (State Bar No. 228731)
3 Adam E. Polk (State Bar No. 273000)
4 **GIRARD SHARP LLP**
5 601 California Street, Suite 1400
6 San Francisco, CA 94108
7 Tel: (415) 981-4800
8 Fax: (415) 981-4846
9 dsharp@girardsharp.com
10 jelias@girardsharp.com
11 apolk@girardsharp.com
12

13 Eric H. Gibbs (State Bar No. 178658)
14 Amy M. Zeman (State Bar No. 273100)
15 **GIBBS LAW GROUP LLP**
16 505 14th Street, Suite 1110
17 Oakland, CA 94162
18 Tel: (510) 350-9700
19 ehg@classlawgroup.com
20 amz@classlawgroup.com
21

22 *Plaintiffs' Counsel*

23 **UNITED STATES DISTRICT COURT**
24 **NORTHERN DISTRICT OF CALIFORNIA**
25 **SAN FRANCISCO DIVISION**

26 IN RE PACIFIC FERTILITY CENTER
27 LITIGATION

Case No. 3:18-cv-01586-JSC

**DECLARATION OF ADAM E. POLK IN
SUPPORT OF DEFENDANT CHART
INC.'S ADMINISTRATIVE MOTION TO
FILE UNDER SEAL**

N.D. Cal. Local Rules 7-11 and 79-5

Judge: Hon. Jacqueline Scott Corley

No Hearing Date Set Pursuant to L.R. 7-11(c)

I, Adam E. Polk, declare as follows:

1. I am a partner at the law firm Girard Sharp LLP, counsel for Plaintiffs in the above-captioned action. I am an attorney admitted to practice in the State of California and am admitted to practice before this Court. I have personal knowledge of the matters stated herein. If called as a witness, I would testify to the facts set forth below.

2. I submit this declaration in accordance with Civil Local Rule 79-5(d)(1)(A) in support of Defendant Chart Inc.'s Administrative Motion to File Under Seal (ECF No. 633) ("Administrative Motion").

3. Specifically, Chart requested an order granting leave to file under seal Plaintiffs-designated portions of Exhibits A through D of Chart's Motion to Exclude Plaintiffs' Expert Dr. Elizabeth Grill.

4. Plaintiffs were served with an unredacted copy of the Administrative Motion on December 23, 2020.

5. Paragraph 12.3 of the Second Amended Stipulated Protective Order prohibits a party from filing in the public record any disclosure or discovery material that is designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" ("Protected Material") without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons. Protected Material includes portions of pleadings that contain, summarize, or reflect the Protected Material. ECF No. 598 at ¶ 12.3.

6. I have reviewed the Administrative Motion and the materials sought to be filed under seal and confirm that the portions identified below merit sealing:

Exhibits A through D of Chart's Motion to Exclude Plaintiffs' Expert Dr. Elizabeth Grill

Exhibit	Portions to be Sealed ¹	Confidentiality Designation
A	46: 19, 23 47: 8 48: 8, 13, 17, 18, 21, 22 index p. 2: column 5 index p. 5: columns 3, 4	Confidential

¹ Numbers represent page: lines unless otherwise indicated.

Exhibit	Portions to be Sealed ¹	Confidentiality Designation
	index p. 6: column 5	
B	1: sections V-VIII 2: paragraph 1 3: paragraph 5 20-54: <i>passim</i> Exhibit A to Expert Report of Dr. Grill: <i>passim</i>	Confidential
C	53: 24 54: 5, 8, 9, 11 111: 8, 10, 20, 22 113: 4, 5, 23 114: 7, 15, 17, 19, 21 115: 14 120: 6, 7, 8, 10, 12, 14, 16, 21 139: 7 140: 5 142: 12 167: 18 177: 6, 7 194: 19, 25 195: 22 198: 17, 20, 22, 24 index p. 7: column 1 index p. 14: column 3 index p. 15: column 3 index p. 19: column 1	Confidential
D	3: 1st full paragraph, items 1-4 8: last paragraph 9: all but last paragraph 11: paragraphs 1 and 3, footnote 20 18: items 4-8	Confidential

7. Documents filed with the Court prior to dispositive motion practice may be sealed if the party seeking to seal the documents makes a particularized showing of good cause. *See Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006). The Court has “broad latitude” under Rule 26(c) to prevent disclosure of confidential matters while discovery is ongoing. *Phillips v. General Motors Corp.*, 307 F.3d 1206, 1211-12 (9th Cir. 2002).

8. Plaintiffs only seek to seal the portions identified above that contain Plaintiffs' names and identifying information which this Court has previously permitted to be filed under seal. See Order, ECF No. 404 at 3.

9. Given the sensitive, highly personal subject matter of this litigation, which relates to Plaintiffs' procurement of fertility services and the status of their eggs and embryos, Plaintiffs' need for anonymity outweighs any public interest in knowing Plaintiffs' identities. *See Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1068 (9th Cir. 2000). Thus, good cause exists to protect Plaintiffs' identities. *See, e.g., San Ramon Reg'l Med. Ctr., Inc. v. Principal Life Ins. Co.*, No. C 10-02258 SBA, 2011 WL 89931, at *1 n.1 (N.D. Cal. Jan. 10, 2011); *Jane Roes 1-2 v. SFBSC Mgmt., LLC*, 77 F. Supp. 3d 990, 996 (N.D. Cal. 2015) (holding that "anonymity need not, and should not, impede either party's ability to develop its case.").

10. Furthermore, as courts have recognized the need to protect sensitive records like those at issue here from disclosure, good cause exists to seal the portions identified in the materials above. *See, e.g., Eugene S. v. Horizon Blue Cross Blue Shield of N.J.*, 663 F.3d 1124, 1135–36 (10th Cir. 2011); *see also San Ramon Reg'l Med. Ctr., Inc. v. Principal Life Ins. Co.*, No. C 10-02258 SBA, 2011 WL 89931, at *1 (N.D. Cal. Jan. 10, 2011).

11. For the foregoing reasons, Plaintiffs request that the Court enter the Administrative Motion to seal the portions of the materials identified above.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 8th day of January, 2021, in Blackhawk, California.

/s/ Adam E. Polk
Adam E. Polk

CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2021, I electronically filed the foregoing document using the CM/ECF system, which will send notification of such filing to all counsel of record registered in the CM/ECF system.

/s/ Adam E. Polk

Adam E. Polk